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BRIEF MESSAGE:

Per your request
Copy of Decision.

Note change in number.



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IBM CORPORATION
INTELLECTUAL PROPERTY LAW
11400 BURNET ROAD
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In re Application of
Jimmy Ming-Der Hsu
Application No. 09/965,145
Filed: September 27, 2001
Attorney Docket No. AUS920010508US1

OFFICE OF PETITIONS
DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) filed March 15, 2007, requesting revival of the above-identified application.

The petition is dismissed.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time (and fee) under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

This application became abandoned for failure to timely pay the issue and publication fee on or before November 24, 2004, in reply to the Notice of Allowance mailed August 24, 2004. A Notice of Abandonment was mailed on January 13, 2004.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee required by 37 CFR 1.17(m); (3) an adequate statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) in some instances, a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (4) above.

35 U.S.C. § 41(a)(7) authorizes the Commissioner to accept a petition "for the revival of an unintentionally abandoned application for a patent." As amended December 1, 1997, 37 CFR 1.137(b)(3) provides that a petition under 37 CFR 1.137(b) must be accompanied by a statement that the delay was unintentional, but provides that "[t]he Commissioner may require additional information where there is a question whether the delay was unintentional." Where

The language of both 35 USC 41(a)(7) and 37 CFR 1.137(b) are clear and unambiguous, and furthermore, without qualification. That is, the delay in filing the reply during prosecution, as well as in filing the petition seeking revival, must have been, without qualification, "unintentional" for the reply to now be accepted on petition. The Office requires that the entire delay be at least unintentional as a prerequisite to revival of an abandoned application to prevent abuse and injury to the public. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 7 (1982), reprinted in 1982 U.S.C.C.A.N. 771 ("[i]n order to prevent abuse and injury to the public the Commissioner . . . could require applicants to act promptly after becoming aware of the abandonment"). The December 1997 change to 37 CFR 1.137 did not create any new right to overcome an intentional delay in seeking revival, or in renewing an attempt at seeking revival, of an abandoned application. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53160 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 87 (October 21, 1997); and clearly stated clear that any protracted delay could trigger, as here, a request for additional information. As the courts have since made clear, a protracted delay in seeking revival, as here, requires a detailed explanation that will excuse the delay as opposed to a general allegation. See Lawman Armor v. Simon, 2005 U.S. Dist. Lexis 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) at *21-*23.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.


Any renewed petition may be addressed as follows:

By mail: Mail Stop PETITIONS
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Service Window
Randolph Building 401 Dulany Street
Alexandria, VA 22314:

By fax: (571) 273-8300
ATTN: Office of Petitions

Inquiries related to this decision may be made to the undersigned at (571) 272-³²⁰⁸~~3247~~.



Karen Creasy
Petitions Examiner
Office of Petitions

cc:

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